

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Spectrum Sharing Plan Among	)	IB Docket No. 02-364
Non-Geostationary Satellite Orbit Mobile Satellite	)	
Service Systems in the 1.6/2.4 GHz Bands	)	

To: The Commission

**REPLY COMMENTS OF ICO GLOBAL COMMUNICATIONS (HOLDINGS)  
LIMITED**

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## SUMMARY

The record in this proceeding confirms that a redistribution of scarce Big LEO spectrum allocated for use by CDMA mobile satellite service (“MSS”) systems, including Globalstar, would be a short-sighted solution to the unsubstantiated spectrum needs of other services and would not serve the public interest. Globalstar persuasively demonstrated its need for its full existing spectrum assignment to support current and new services. Iridium, on the other hand, utterly failed to provide the factual evidence requested by the Commission to support its unsubstantiated demand for additional spectrum. Other parties seeking reallocation of Big LEO spectrum for other uses also failed to justify a further reduction in the ever-diminishing supply of globally harmonized MSS spectrum that is uniquely suited for global MSS systems.

The record demonstrates that a redistribution of Big LEO spectrum will harm the public interest by disrupting existing and new Globalstar services, increasing the potential for harmful interference to other licensed services, and foreclosing additional MSS competition in the Big LEO bands. ICO urges the Commission to proceed cautiously before embarking on an irreversible course that could have unanticipated consequences for existing and new services, as well as the public at large.

Furthermore, a rulemaking proceeding that directly affects only two licensees and, in particular, effectively revokes or modifies Globalstar’s license is inadequate to satisfy the hearing requirements of Sections 312 and 316 of the Communications Act of 1934, as amended. The Commission cannot adequately address the factual questions at issue here through a rulemaking proceeding consisting of a single cycle of comments and reply comments. Absent any record evidence warranting a partial revocation or modification of Globalstar’s license, the Commission cannot meet the burden of proof required under Sections 312 and 316.

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ICO Global Communications (Holdings) Limited (“ICO”) submits reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

As the controlling principal of New Globalstar Corporation, the proposed purchaser of Globalstar’s satellite assets,<sup>2</sup> ICO opposes any regulatory changes that would disrupt Globalstar’s existing services or hinder its ability to expand its business to meet the growing demand for its services. As an initial matter, ICO notes that any decision to redistribute spectrum assigned to Globalstar would be a rush to judgment without the benefit of a complete factual record. In initiating this proceeding, the Commission recognized that one of the critical factual questions to be addressed is Globalstar’s projected future spectrum needs.<sup>3</sup> This issue,

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<sup>1</sup> See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 16043 (2001). All comments filed on July 7, 11 and 14, 2003, in this docket will hereinafter be short cited.

<sup>2</sup> See Applications filed in IB Docket No. 03-136.

<sup>3</sup> See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 2090 ¶ 269 (2003) (“*Big LEO Spectrum NPRM*”).

however, cannot be meaningfully addressed until Globalstar is able to emerge from bankruptcy and the new owner has had an opportunity to assess the spectrum needs of the Globalstar system and develop a viable business plan. While Globalstar remains in bankruptcy, any plan to redistribute its spectrum will not properly account for the reasonable, future spectrum needs of the Globalstar operations.

In any event, the record demonstrates that Globalstar is fully using its assigned spectrum in the 1610-1626.5 MHz (“L-band”) and 2483.5-2500 MHz (“S-band”) bands (collectively, “Big LEO spectrum”).<sup>4</sup> A reduction in its available spectrum would compromise its service quality and limit the potential for service growth. The record also demonstrates that allowing Iridium to use additional spectrum in the 1610-1626.5 and 2483.5-2500 MHz (“Big LEO”) bands likely will cause harmful interference to Globalstar services and radioastronomy services (“RAS”).

In addition, Iridium has failed to provide the factual evidence necessary to demonstrate its alleged urgent need for additional spectrum or otherwise justify a revision of the Big LEO band plan. The filed comments overwhelmingly oppose Iridium’s self-serving proposal to redistribute Big LEO CDMA spectrum for its own exclusive use. Not surprisingly, Iridium alone supports its proposal. The vast majority of commenters addressing Iridium’s proposal argued that redistributing Big LEO CDMA spectrum will disrupt existing licensed services or foreclose additional MSS competition.<sup>5</sup> Redistribution of scarce Big LEO CDMA spectrum for Iridium’s exclusive use at best will serve as a short-sighted solution to unsubstantiated, short-term

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<sup>4</sup> Globalstar’s assigned frequencies at 1610-1621.35 and 2483.5-2500 MHz will be referred to hereinafter as “Big LEO CDMA spectrum.” Iridium’s assigned frequencies at 1621.35-1626.5 MHz will be referred to hereinafter as “Big LEO TDMA spectrum.”

<sup>5</sup> Joint Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C. (collectively, “Globalstar”), Globalstar Creditors Comments, Globalstar Canada Comments, Cornell Comments and Lockheed Martin Comments.

spectrum needs. At the same time, it likely will foreclose the competitive deployment of new MSS systems in the Big LEO bands. Moreover, Iridium's additional proposal to redistribute Big LEO CDMA downlink spectrum for unspecified terrestrial services is at odds with the Commission's stated desire to preserve and promote MSS competition in the band.

Furthermore, the FCC cannot revoke or modify Globalstar's licensed use of its assigned spectrum without providing a hearing or meeting its burden of proof, as required under Sections 312 and 316 of the Communications Act of 1934, as amended ("Communications Act"). In the absence of any factual evidence, the Commission cannot meet the burden of proof required under Sections 312 and 316 to warrant a revocation or modification of Globalstar's Big LEO license.

## **II. REDISTRIBUTION OF BIG LEO CDMA SPECTRUM WILL HARM COMPETITION, CONSUMER WELFARE, AND THE PUBLIC INTEREST**

The record demonstrates that a redistribution of Big LEO spectrum will harm the public interest by disrupting existing and new Globalstar services, increasing the potential for harmful interference to other licensed services, and foreclosing additional MSS competition in the Big LEO bands.

### **A. Redistribution Will Severely Limit Globalstar's Ability to Serve Existing and New Customers**

Despite the continuing volatility in the MSS market and the larger telecommunications market, Globalstar and Iridium have survived as the only two Big LEO MSS operators. Both Globalstar and Iridium have proven that they can offer attractive, useful services using their assigned spectrum. Any modification of these spectrum assignments could disrupt the delicate balance that historically has allowed both systems to provide crucial services to the public and maintain steady growth.

In fact, the record undisputedly demonstrates that Globalstar is fully using its assigned spectrum. Consequently, any reduction of its spectrum assignment would impair its ability to

continue and expand existing services, as well as introduce new services, to meet the demand of its growing customer base. Specifically, Globalstar stated in its comments that all of its nine uplink channels in the L-band and 13 downlink channels in the S-band are used to support its existing voice and data, aviation, and telemetry services.<sup>6</sup> To continue these services and offer new ATC services in the future, Globalstar must assign a minimum of one uplink channel to ATC, two to aviation, and two to telemetry, thus leaving only four uplink channels for voice and data services.<sup>7</sup>

Moreover, to protect RAS operations in the L-band and global navigation satellite system (“GNSS”) operations in the 1574-1610 MHz band, Globalstar must comply with stringent technical requirements that limit the usability of three to five uplink channels in the lower portion of L-band.<sup>8</sup> Additionally, to comply with Federal Aviation Administration and RTCA standards to protect GNSS operations, Globalstar must restrict its aviation services to only the four highest channels in the upper portion of the L-band above 1616 MHz.<sup>9</sup> Accordingly, the record shows that because of significant constraints on the use of the lower L-band channels, continued access to limited spectrum in the upper portion of the L-band is critical to Globalstar’s provision of new and existing services.

The record further shows that, because of the different technical restrictions that apply to the uplink L-band channels and downlink S-band channels, Globalstar requires use of all 13 S-band channels in order to provide matching downlink capacity for the nine uplink L-band

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<sup>6</sup> See Globalstar Joint Comments at 7.

<sup>7</sup> *Id.* at 8, Technical App. § 1.

<sup>8</sup> *Id.* at 10-11, Technical App. § 2. See also Globalstar Canada Comments at 2 (noting that, in Canada, the first three uplink channels in lower L-band “cannot be fully utilized because of the need to protect the radioastronomy band”).

<sup>9</sup> See Globalstar Joint Comments at 7, Technical App. § 1.1; Globalstar Canada Comments at 3.

channels.<sup>10</sup> Thus, a reduction in the number of available S-band channels would render a proportionate number of L-band channels unusable for duplex transmissions and consequently reduce the overall capacity of the system.<sup>11</sup>

**B. Iridium's Use of Redistributed Spectrum Likely Will Interfere with Other Licensed Services**

Despite mounting evidence that Iridium's use of additional L-band spectrum will cause harmful interference to other licensed services, Iridium has failed to offer any technical showing to address interference concerns. Cornell University ("Cornell"), for example, repeatedly has expressed "serious concerns" regarding the potential for interference to RAS operations arising from Iridium's use of additional L-band spectrum.<sup>12</sup> Cornell specifically noted that the "incidence of low intensity emission features within the 1610-1613 MHz RAS band" changed during the time of Iridium's STA use of L-band channels 8 and 9.<sup>13</sup> It also noted that the worst of those unwanted emission features "disappeared" after Iridium ceased operations on channel 8.<sup>14</sup> Because Cornell's evaluation of the impact of Iridium's STA operations on RAS is ongoing and may not be completed for at least another month or two,<sup>15</sup> and because the impact on RAS always has been and is critical to any decision about the use of this band, reaching any

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<sup>10</sup> See Globalstar Joint Comments at 9-10, Technical App. § 3.

<sup>11</sup> *Id.*

<sup>12</sup> See Cornell Comments at 4; *Iridium Constellation, LLC and Iridium, US LP; Request for Special Temporary Authorization*, DA 03-1949, ¶ 9 (IB June 16, 2003) (noting Cornell's comments indicating that it is in the process of analyzing data to determine whether Iridium's temporary use of additional L-band spectrum is causing harmful interference to its RAS operations).

<sup>13</sup> See Cornell Comments at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



conclusion on RAS interference questions without the benefit of Cornell's analysis would be premature.<sup>16</sup>

In addition, Globalstar Canada repeatedly has raised concerns regarding interference from Iridium's operations on additional L-band channels to Globalstar Canada's licensed L-band operations in Canada.<sup>17</sup> Similarly, Globalstar has reported interference from Iridium's STA use of L-band channels 8 and 9 in the Middle East.<sup>18</sup> Globalstar further indicated that it required additional information and cooperation from Iridium in order to complete its interference analysis.<sup>19</sup> In the face of these significant interference concerns, the Commission should not reward Iridium's failure to provide any interference analysis with more L-band spectrum. At a minimum, the unresolved factual questions regarding the potential for interference by Iridium's use of additional spectrum require the Commission to provide the parties with an adequate opportunity to collect data and complete a thorough interference analysis.

### **C.     Redistribution Will Foreclose Additional MSS Competition**

Redistributing Big LEO CDMA spectrum for TDMA use will solely advantage Iridium and deprive the public of the benefits of additional MSS competition that could develop from the entry of new Big LEO CDMA systems in the future. As Lockheed Martin noted, multiple

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<sup>16</sup> In lieu of providing any technical showing to address Cornell's interference concerns, Iridium casually stated in its comments that it has entered into various memoranda of understanding ("MOUs") to protect RAS operations against interference from its L-band operations and will "revisit" those MOUs if it acquires additional spectrum. *See* Iridium Comments 38-39. Globalstar, however, noted that "Iridium cannot protect RAS sites from interference from its secondary downlink through the exclusion zone methodology." Globalstar Joint Comments at 26. It further stated that Iridium's MOUs were "established with Iridium's operations restricted to 1621.35-1626.5 MHz in the U.S." and "it is not clear that it [Iridium] can protect any RAS site with operations below 1621.35 MHz." *Id.* at 27.

<sup>17</sup> *See* Globalstar Canada Comments at 3; *Modification of Licenses Held by Iridium Constellation, LLC and Iridium, US LP*, Order to Show Cause, DA 03-2298, ¶ 7 (IB July 17, 2003) (noting Globalstar Canada's comments indicating potential for interference to its Canadian operations caused by Iridium's use of additional L-band spectrum).

<sup>18</sup> *See* Letter from William D. Adler, Globalstar, to Thomas S. Tycz, International Bureau, FCC, File Nos. STA-MS-20030515-00089 & SES-MS-20030515-00666 (June 11, 2003) ("Globalstar June 11 Letter").

<sup>19</sup> *Id.* at 1, n.1.

TDMA systems cannot share the same spectrum because they transmit bi-directionally using the same frequency band and operate on dedicated frequencies.<sup>20</sup> Big LEO spectrum allocated for TDMA use can accommodate new MSS systems only through a redistribution of spectrum previously assigned to an existing system. In contrast, Big LEO CDMA spectrum can support the future entry of new MSS systems because multiple CDMA systems can share the same spectrum.

Although the protracted economic downturn appears to have dampened investor interest in new commercial Big LEO MSS systems, a market rebound in the near future could stimulate investments in additional MSS systems. A premature redistribution of scarce Big LEO CDMA spectrum for TDMA or other uses, however, effectively would deprive new Big LEO MSS systems of sufficient spectrum necessary to sustain commercially viable operations. For example, both NTIA and Lockheed Martin have expressed interest in making Big LEO CDMA spectrum available for use by federal government MSS systems.<sup>21</sup> Those proposals, however, are unlikely to be viable options if the Commission redistributes the spectrum for other exclusive uses, rather than allowing the spectrum to remain available for future MSS CDMA systems.<sup>22</sup> Ultimately, if the spectrum is redistributed for exclusive TDMA use, only Iridium and its limited pool of subscribers would profit at the expense of the larger public interest.

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<sup>20</sup> See Lockheed Martin Comments at 5; see also *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 5942 ¶ 7, 5954 ¶ 43 (1994) (“*Big Leo Order*”).

<sup>21</sup> See NTIA Comments, Exec. Summary; Lockheed Martin Comments at 3.

<sup>22</sup> See NTIA Comments §§ II-IV; Lockheed Martin Comments at 3-5.

### **III. IRIDIUM HAS OFFERED NO CREDIBLE EVIDENCE TO SUPPORT ITS DEMAND FOR ADDITIONAL SPECTRUM**

As the Commission noted, Iridium's rulemaking petition contained only "anecdotal evidence" of its purported need for additional spectrum. Iridium's woefully inadequate evidence utterly fails to demonstrate a need for additional spectrum. Its factual evidence consists solely of 1) information earlier provided in its rulemaking petition, 2) a "Spectrum Report" filed with Chairman Powell in January 2003, and 3) limited data regarding its Middle East operations.

Despite the Commission's explicit request in the *Big LEO Spectrum NPRM* for detailed comments and technical information,<sup>23</sup> Iridium failed to offer any specific data regarding 1) the number of its current and future subscribers; 2) its total system capacity, used and unused; or 3) its customers' demand for spectrum in the United States versus other parts of the world. In lieu of offering critical data regarding its total number of subscribers and estimates of its projected subscriber levels, Iridium baldly stated that the number of its Department of Defense subscribers is "rapidly approaching...20,000" and provided limited data reflecting percentage increases in its subscriber levels.<sup>24</sup> It also failed, as requested, to specify concrete measurements of traffic and unused capacity. Instead, Iridium presents the Commission with irrelevant data reflecting percentage increases in call minutes,<sup>25</sup> peak utilization rates,<sup>26</sup> and traffic usage confined to its Middle East operations during a brief two-month period.<sup>27</sup>

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<sup>23</sup> See *Big LEO Spectrum NPRM*, 18 FCC Rcd at 2089-90 ¶¶ 267-68.

<sup>24</sup> Iridium Comments at 16, Exh. B (Spectrum Report) § 3.

<sup>25</sup> *Id.* at 16-17, Exh. B (Spectrum Report) § 1.

<sup>26</sup> *Id.*, Exh. B (Spectrum Report) § 4-6.

<sup>27</sup> Letter from Peter D. Shields, Counsel, Iridium, to Thomas S. Tycz, International Bureau, FCC, File Nos. STA-MS-20030515-00089 & SES-MS-20030515-00666 (May 8, 2003) ("Iridium May 8 Letter") (attached to Globalstar Joint Comments as Attachment D).

Moreover, the limited data that Iridium did provide is riddled with inconsistencies and ambiguities. For example, in a May 8, 2003 letter to the International Bureau, Iridium attested that its Middle East traffic since April 11, 2003 approached or exceeded 200,000 call minutes per day, but the underlying chart attached to that letter indicates that the traffic data was measured in number of calls, not call minutes.<sup>28</sup> Iridium also stated that it is “unable to handle satisfactorily geographically dense traffic loads that exceed approximately 180 to 200 users with single beam loading,” but failed to offer any traffic data to support its unsubstantiated contention that it “experienced demand well in excess of that maximum” in the Middle East.<sup>29</sup> In addition, Iridium provided various data regarding “blocked call” and “call acquisition” rates,<sup>30</sup> but its admission that its system “is not able to track these failed call attempts since they are never recorded within the Iridium system”<sup>31</sup> seems to belie its ability to measure blocked call and call acquisition rates.

Furthermore, Iridium’s data regarding its peak utilization rates is grossly inadequate. Although Iridium stated that peak conditions “vary by event and by day with a nominal peak duration of 15-30 minutes,” it is unclear how long the peak conditions actually lasted, thus rendering the data useless.

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<sup>28</sup> *Id.*, at 2. Globalstar also previously highlighted several other discrepancies in the data provided in the Iridium May 8 Letter. *See* Globalstar June 11 Letter, Attachment.

<sup>29</sup> Iridium Comments at 15.

<sup>30</sup> *Id.* at 14; Iridium May 8 Letter at 5-6.

<sup>31</sup> Iridium Comments, Exh. B (Spectrum Report) § 6.

#### IV. THE FACTUAL PREREQUISITES FOR A RE-EXAMINATION OF THE BIG LEO BAND PLAN HAVE NOT OCCURRED

Contrary to the Commission's suggestion in the *Big LEO NPRM* or Iridium's contention in its comments,<sup>32</sup> nothing in the Globalstar Big LEO license or the *Big LEO Order* requires a redistribution of its assigned spectrum if only one CDMA system is implemented. In fact, when the Commission adopted the Big LEO service rules, it expressly declined to provide for any automatic reduction of CDMA uplink spectrum if only one CDMA system is implemented.<sup>33</sup> The Commission reasoned that "uncertainties are present in the lower portion of the band that are not present in the upper portion."<sup>34</sup> Specifically, the Commission noted the presence of GLONASS and RAS operations in the lower portion of the Big LEO L-band. As a result, the FCC recognized that "an assignment of 8.25 MHz for each of the two LEO system architectures may not prove equivalent."<sup>35</sup>

Consequently, the Commission deferred a decision on redistributing Big LEO spectrum until the occurrence of certain contingencies alleviating inter-service sharing constraints in the L-band.<sup>36</sup> These contingencies have not yet occurred. The record shows that Globalstar remains subject to restrictions required to protect GLONASS and RAS operations in the L-band from harmful interference, while Iridium is free from those restrictions because its assigned frequencies are at a sufficient distance from GLONASS and RAS frequencies.<sup>37</sup> Thus, a modification of the Big LEO band plan to facilitate an equal division of L-band spectrum

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<sup>32</sup> See *Big LEO Spectrum NPRM*, 18 FCC Rcd at 2088 ¶ 263; Iridium Comments at 6.

<sup>33</sup> See *Big LEO Order*, 9 FCC Rcd at 5960 ¶ 55.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Joint Comments of Globalstar, Technical App. § 2.

between the two systems would be inequitable because it would not provide for equivalent spectrum.

## **V. A WHOLESALE REALLOCATION OF BIG LEO SPECTRUM FOR OTHER SERVICES IS UNWARRANTED**

As NTIA stressed, “[s]pectrum available for MSS is scarce, and the Big LEO bands represent possibly the last spectrum resources below 3 GHz that will be available for worldwide use.”<sup>38</sup> NTIA further confirmed that “obtaining international allocation of other spectrum for MSS is highly unlikely.”<sup>39</sup> Given the scarcity of globally harmonized MSS spectrum, any further reduction of that ever-diminishing supply of spectrum would be short-sighted and virtually irreversible. No showing has been made in this proceeding that a compelling spectrum need warrants a reversal of the Commission’s well-established Big LEO MSS allocation policies.

As discussed in Section II(A) above, Globalstar requires use of all of its assigned Big LEO spectrum to provide its services. Thus, a reallocation of its spectrum for other services unnecessarily would disrupt its ability to continue and expand existing services, as well as develop new services. At the same time, reallocating and re-licensing the spectrum will require additional time, and newly licensed systems will require even more time to be implemented.

Although Verizon Wireless proposed that Big LEO S-band frequencies could be used as replacement spectrum for displaced MDS incumbents,<sup>40</sup> MDS licensees themselves have expressed no interest in the spectrum.<sup>41</sup> The License-Exempt Alliance and IEEE 802 Committee

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<sup>38</sup> See NTIA Comments, Exec. Summary.

<sup>39</sup> *Id.*

<sup>40</sup> See Verizon Wireless Comments at 4-8.

<sup>41</sup> See, e.g., Wireless Communications Ass’n Comments (expressing no view on reallocation of Big LEO S-band for other services).

also requested use of Big LEO S-band frequencies for unlicensed services.<sup>42</sup> These parties, however, failed to justify any need to reserve scarce MSS spectrum resources for unlicensed use, particularly in light of the Commission's recent proposal to make available 255 MHz of spectrum in the 5 GHz band, in addition to the 300 MHz of spectrum that currently is available in that band, to meet the spectrum needs of wireless unlicensed services.<sup>43</sup>

In addition, as Lockheed Martin noted, the proliferation of unlicensed operations in the Big LEO bands collectively could create harmful interference and "could place both current and future satellite operations at risk."<sup>44</sup> Furthermore, as discussed in Section II(C) above, reallocation will preclude any opportunities for additional MSS competition in the Big LEO band.

## **VI. A RULEMAKING PROCEEDING IS INADEQUATE TO SATISFY THE HEARING REQUIREMENTS OF SECTIONS 312 AND 316**

The redistribution of Globalstar spectrum to Iridium or for other services effectively would partially revoke Globalstar's license with respect to the redistributed spectrum.<sup>45</sup> Alternatively, if the proposed redistribution of Globalstar spectrum does not qualify as a license revocation, it must be deemed to be a license modification.<sup>46</sup> In either case, the Commission

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<sup>42</sup> See License-Exempt Alliance Comments at 8-10; IEEE 802 Comments at ¶¶ 1-8.

<sup>43</sup> See *Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, Notice of Proposed Rulemaking, FCC 03-110, ¶¶ 1, 3 (2003).

<sup>44</sup> See Lockheed Martin Comments at 5.

<sup>45</sup> Redistribution of Globalstar spectrum would be no different from the Commission's action in *P&R Temmer v. FCC*, where the court found that the Commission had revoked, rather than modified, a license when it reassigned 15 of 20 channels authorized under an SMR license for failure to meet a condition of the license. See *P&R Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984).

<sup>46</sup> For purposes of Section 316, a license is modified "when an unconditional right conferred by the license is substantially affected." *Id.* at 927-28. The Globalstar Big LEO license is not subject to any condition requiring a redistribution of its assigned spectrum if only one CDMA system is implemented. Because Globalstar's right to use its assigned spectrum would be substantially affected by a redistribution of that spectrum, the proposed redistribution thus qualifies as a modification under Section 316.

must comply with the hearing requirements of Sections 312 and 316 before revoking or modifying a license.

The Commission cannot circumvent the statutory hearing requirements simply by conducting a rulemaking proceeding.<sup>47</sup> Although the Commission may adopt rules of general applicability,<sup>48</sup> it cannot avoid adjudicatory hearing requirements where a “relatively small number of persons [is] concerned, who [are] exceptionally affected, in each case upon individual grounds.”<sup>49</sup> Thus, a rulemaking proceeding that directly affects only two licensees (i.e., Globalstar and Iridium) and, in particular, effectively revokes or modifies Globalstar’s license is inadequate to satisfy the hearing requirements of Sections 312 and 316.

The D.C. Circuit Court has stated that “[i]f...there are questions of fact to be resolved, then an evidentiary hearing is mandated by section 316.”<sup>50</sup> As the FCC acknowledged in the NPRM, a decision on whether to redistribute spectrum will require detailed factual information, including data on Iridium’s and Globalstar’s actual spectrum use, projections of future spectrum requirements, and the number of existing and future subscribers. These factual questions require an evidentiary hearing, rather than merely a rulemaking proceeding based on a single cycle of comments and reply comments. Furthermore, these questions cannot be resolved properly until

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<sup>47</sup> *Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1318 (D.C. Cir. 1995) (“Obviously, the FCC cannot, merely by invoking its rulemaking authority, avoid the adjudicatory procedures required for granting and modifying *individual* licenses.”) (emphasis in original).

<sup>48</sup> See, e.g., *Committee for Effective Cellular Rules v. FCC*, 53 F.3d at 1320 (FCC properly exercised rulemaking authority when it revised its rules to reduce the required signal strength for cellular systems to 32 dBm); *Telocator Network v. FCC*, 691 F.2d 525, 551 (D.C. Cir. 1982) (FCC properly exercises rulemaking authority when issues “involve legislative rather than adjudicative facts, and have prospective effect and class-wide applicability”).

<sup>49</sup> *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 446 (1915). See also *California Citizens Band Ass’n v. FCC*, 375 F.2d 43, 53 (9<sup>th</sup> Cir. 1967) (upholding FCC’s authority to adopt general rules limiting operations of all class D stations in the citizens radio service, but noting that “[a] drastic change in the allowable operation of a Class D license could result in a judicial determination that a basic license right had been abused, entitling the licensee to a public hearing”).

<sup>50</sup> *Western Broadcasting Co. v. FCC*, 674 F.2d 44, 55 (D.C. Cir. 1982).



Globalstar emerges from bankruptcy and the new owner has had an adequate opportunity to fully assess both existing and future spectrum requirements.

Section 312(c) requires the Commission, before revoking a license, to issue an “order to show cause why an order of revocation...should not be issued.” The Commission must provide a “statement of the matters with respect to which the Commission is inquiring,” as well as an opportunity “to appear before the Commission...and give evidence upon the matter specified therein.”<sup>51</sup> Moreover, under both Sections 312 and 316, the Commission must meet “both the burden of proceeding with the introduction of evidence and the burden of proof” before it can modify or revoke Globalstar’s Big LEO license by redistributing spectrum assigned under that license. The record developed in this proceeding lacks any evidence justifying a redistribution of Globalstar’s Big LEO spectrum.

The Commission has failed to provide notice of any grounds sufficient to warrant a license revocation under Section 312. Section 312(a) authorizes the Commission to revoke a license only under limited circumstances, such as where a licensee knowingly has made false statements, willfully or repeatedly has failed to operate substantially in accordance with its license, or willfully or repeatedly violated any provision of the Communications Act or any FCC rule. The Commission is not authorized to revoke a license where, as the case here, the licensee has fully complied with the terms of its license. The Commission cannot revoke Globalstar’s license use of certain Big LEO spectrum merely because it decides to reverse course on its existing policies.

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<sup>51</sup> Similarly, Section 316 directs the Commission to notify the licensee “in writing of the proposed action and the grounds and reasons therefore.” It also requires the Commission to give “reasonable opportunity, of at least thirty days, to protest such proposed order of modification.”

## VII. CONCLUSION

The record in this proceeding demonstrates the continued importance of Big LEO MSS systems generally and the public interest in preserving scarce Big LEO CDMA spectrum to support existing and new MSS systems. ICO urges the Commission to maintain the Big LEO band plan in order to ensure sufficient spectrum to meet consumer demand for ubiquitous, global satellite services and to support the competitive development and growth of multiple MSS systems.

Respectfully submitted,

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